INDIANA ENERGY ASSOCIATION REPLY COMMENTS

IURC NOTICE OF PROPOSED RULEMAKING 04-02,

LSA DOCUMENT #04-144

(170 I.A.C. 4-1.2 et seq.)

DECEMBER 10, 2004

INTRODUCTION

On September 1, 2004, the Indiana Utility Regulatory Commission ("Commission") issued its Notice of Proposed Rulemaking ("NOPR") addressing Customer Rights and Responsibilities for Electric, Gas, Water, Telephone, and Sewage Disposal Companies.[1] The Indiana Energy Association ("IEA") provided initial comments on the proposed rule on November 12, 2004, which addressed the Commission's proposed rulemaking concerning Electric Customer Service Rights and Responsibilities embodied in 170 I.A.C. 4-1.2 et seq. The Commission received initial comments from Indiana utilities, including IEA members, as well as other interested parties.

The IEA has concerns with many of the initial comments. However, due to time limitations, the IEA's reply comments will not address all comments received, and IEA's lack of response on a certain issue should not be viewed as acquiescence or agreement. Rather, the breadth of issues and comments received concerning the proposed rule provides further justification for the IEA's proposal to move the proposed rulemaking into a workshop setting. The issues are complex and cannot be adequately discussed and debated through two sets of written comments. Rather the best interest of all utility customers would be met by the Commission establishing a series of workshops where all interested parties can discuss their various suggestions and positions.

IEA's reply comments primarily focus on the issues raised in comments offered by the OUCC, Citizens Action Coalition of Indiana ("CAC"), and St. Joseph Valley Project ("St. Joseph") that are viewed as significant to the IEA members.

[1] 170 IAC 4-1.2 et. seq., 170 IAC 5-1.2 et. seq., 170 IAC 6-1.2 et. seq., 170 IAC 7-1.2 et. seq., and 170 IAC 8.5-2-1 et. seq., respectively.

1. <u>Deposits</u>. The OUCC's and several other parties' comments recommend that the Commission modify its proposed rule requiring a maximum deposit. The OUCC suggests limiting it to 1/12 of the estimated annual billings, if the customer elects to enroll in the utility's budget billing program during a non-peak use billing period. St. Joseph and the CAC recommend an across the board 1/12 of an annual bill deposit. IEA members are not in favor of this proposed limitation, as it inadequately reflects the risk to Indiana utilities throughout the year.

Specifically, budget billing amounts set during non-peak use billing periods do not take into account that during peak use billing periods, bills increase and the risk to which utilities are exposed increases significantly. Because budget billing amounts set during non-peak use billing periods invariably understate actual utility usage during peak months when utilities see a rise in unpaid arrears, budget billing customers are subject to a "true-up" month that allows for the utility to align customers' budget billing amount with actual usage. As Indiana utilities are unable to require a "true-up" deposit during peak use billing periods to compensate for increased risk, the OUCC's suggestion is not a viable alternative that accurately reflects the risk to utilities or considers the rationale behind requiring a deposit.

Indiana rules require a customer to be provided with up to 60 days of service before disconnection occurs. (For example, A new customer can receive service for up to 30 days before an initial bill is issued; the customer has 17 days to make payment; if the customer does not make payment, the utility must give the customer 14 days prior to disconnection of service). Providing such service before receiving payment is essentially an extension of credit, and it is essential for utilities to be able to require from those customers who pose a demonstrable credit risk a deposit of sufficient magnitude to reflect that very real exposure.

In its initial comments, the OUCC also recommends that the proposed rule allow consumers to pay deposits of more than $70 but less than $150 in two monthly installments instead of one monthly installment. The OUCC's recommendation yields the same incongruent result discussed in some of the IEA members' initial comments. To illustrate this point, a customer who is required to pay a deposit more than $70 would be required to pay $35 in order to begin receiving utility service. After the first month, that customer must pay the second $35 installment and its first month's bill for utility service. It is more likely than not that the utility bill will exceed the $35 installment received by the utility in the first month. Should that customer opt not to pay the second $35 installment or his/her utility bill, it is highly unlikely that the first deposit installment will offset the first month's bill. This simplified example does not consider the fact that other Commission rules place a moratorium on disconnection of low income customers during the peak winter months and preclude disconnection of a residential electric or gas customer until that customer has consumed up to 60 days of service as detailed above. As such, the risk to the utility for the remainder of the deposit does not correspond with the purpose of requiring deposits.

Therefore, the IEA members reiterate that the Commission should modify its proposed rule to provide an up front payment of $150 (or the deposit amount owed, whichever is less), before the customer is provided service, with the remainder of any amount owed above the $150 being due in equal installments over two months. This proposed modification would eliminate the incongruent result produced by the original language proposed by the Commission.

Both CAC and St. Joseph suggest that the deposit amount be limited to the average of one (1) month's bill instead of up to two (2) for electric and four (4) months of the average yearly gas bill. For the same reasons provided above, limiting the deposit amount available to Indiana utilities to the average of one (1) month's bill will only increase Indiana utilities' and their customers' exposure to the high costs associated with uncollectible accounts.

2. Interest on Deposits. The OUCC recommends that language be added to the proposed rule specifying that interest earned on customer deposits must be compounded daily and credited monthly. The OUCC reasons that this will ensure that customers do not receive less than the U.S. Treasury rate as an effective yield when a utility holds the customer's deposit. This would be expensive to administer and would not produce significant benefits. For example,

a deposit of $100 earning interest at 6% would yield a $6.00 return for a customer after one year. Based on the OUCC's proposed calculation, a $100 deposit earning interest at 6% compounded daily and credited monthly to the customer's account would yield a return of $0.5012 per month, or $6.01 per year. The changes that Indiana member utilities would be required to make to their billing systems in order to calculate and credit interest under the OUCC's proposed method would be extreme and out of proportion with the small benefit ($0.01 per year in the above example) gained by affected customers. The benefit received clearly does not warrant the new and ongoing costs associated with this modification. Therefore, IEA members are not in favor of calculating interest on deposits such that it is compounded daily and credited monthly.

Furthermore, IEA members support delaying the accrual of interest until the deposit is paid in full.

3. Credit scoring. Most, if not all, initial comments filed address credit scoring. Notably, initial comments provided by the OUCC, CAC, AARP Indiana and St. Joseph raise issues with the use of credit scores to determine customers' creditworthiness. The IEA re-states the position espoused in initial comments submitted by our member companies, which supports credit scoring as a fair, reasonable, and the industry-accepted practice. The IEA is not opposed to present practices utilized to determine creditworthiness, which member companies point out in their initial comments work reasonably well today. The IEA does, however, think that the option of using a credit scoring system is necessary, as it allows for the flexibility to adjust its creditworthiness criteria as circumstances warrant.

A couple of points seem to have been missed by those providing comments opposing the use of credit scores. First, the transaction at issue is in essence the issuance of credit by utilities to a consumer. Our customers utilize the service prior to being billed for that service. Depending on the timing and circumstances surrounding the initiation of service, the initial bill can represent a substantial amount of money owed to the utility. The second point is that many, but not all, Indiana utilities already utilize commercially available credit scoring services in order to ensure simple, non-discriminatory decisions when determining whether a deposit should be required. Those member companies which utilize credit scores only do so in situations where a customer applying for service does not have a payment history with the utility in question. Even when credit scores are utilized, it is not the only factor that is considered by the utility. A customer can always provide the utility other means of creditworthiness proof such as credit reference letters from another utility or proof of employment, home ownership, etc.

In its comments, the OUCC states that, "the IURC should not alter its current rules to allow the use of credit scores to determine a customer's creditworthiness." The OUCC points out that should the Commission allow the use of credit scores, such use should be allowed only as one optional means of demonstrating creditworthiness with alternative means available to use at the consumer's discretion. The OUCC further suggests that customers should have discretion as to what criteria are utilized to determine creditworthiness. Likewise, St. Joseph suggests eliminating credit scoring language in favor of promoting the process of using client's credit history with the utility in paying their utility bills. CAC and AARP Indiana point out that credit scoring should not be part of the rules governing deposits for essential utility service.

Where the OUCC's suggestion is concerned, it ignores the reality that not every customer will provide an accurate reflection of their bill paying tendencies if proving creditworthiness is left to the customer's discretion. Similarly, St. Joseph's suggestion ignores the fact that Indiana utilities are not always privy to information concerning a customer's credit history related solely to paying for utility service. Therefore, the use of a creditworthiness determination, which includes a commercially acceptable credit scoring service, will provide the utility with a much more accurate reflection of a customer's creditworthiness.

Comments also raise concerns over the accuracy and potentially discriminatory factors utilized to determine credit scores. There has been substantial attention paid to the accuracy and fairness of credit reporting by Congress over the past several years. The Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. heavily regulates the consumer reporting industry. This was amended in a substantial way by the Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108-159. The result is a plethora of federal laws which impose accuracy and fairness standards on consumer reporting agencies and data furnishers. Among the many provisions provided by federal law is one in which a consumer reporting agency which violates any provision of the credit reporting law is subject to a private right of action, enforcement by the Federal Trade Commission ("FTC") and state attorneys general. As a result of these provisions, federal case law in this area has developed in a fashion which further encourages accurate reporting. In addition to legal standards, there are stringent operational standards in place to ensure reliability. Perhaps the biggest incentive for accuracy in these scores is the continued success of this country's credit-based economy. In order for this system to work, the consumer reporting industry must produce reliable credit reports, which has the confidence of those entities providing credit.

Comments have also been received expressing concern about the use of social security numbers ("SSNs") and other personal information in these transactions. Federal law provides significant protections with regard to the use of this information as well. The federal Fair Credit Reporting Act ("FCRA"), 15 U.S.C. Sec. 1681 et seq., and the federal Gramm-Leach-Bliley Act, 15 U.S.C. Sec. 6801 et seq., are both privacy statutes that strictly regulate how certain consumer data can be used by businesses.

The FCRA strictly regulates how credit reporting data, including SSNs, can be stored and shared. For example, under the FCRA credit data, which would include an SSN, can only be shared if the person requesting the data has a "permissible purpose." The FCRA recognizes a few narrow permissible purposes and no data can be shared without a permissible purpose. Utility companies fall under one of the permissible purposes since utilities "intend to use the information, as a potential investor or servicer" and "in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation". 15 U.S.C. 1681b(a)(3)(E). The FCRA mandates that consumers have a right to see all information in consumer files and have a right to have any errors corrected. Violators of the FCRA can be sued by the

FTC, by state attorneys general (in federal or state court), and by consumers who are allowed private rights of action.

The federal Financial Modernization Act of 1999, otherwise known as Gramm-Leach Bliley, another federal privacy statute, provides for safeguards of personal identifying information, including but not limited to SSNs that are reported to or from financial institutions, which is defined so broadly that it includes a large number of entities that would not commonly be considered such. Violations are to be enforced by federal regulators.

In summary, credit scoring allows Indiana utilities to protect against the undesired result of socializing the costs associated with increased uncollectible accounts amongst other utility customers. Credit scoring provides a snapshot of a customer's overall habits related to establishing and maintaining good credit, it offers a much more accurate assessment of the risk to which Indiana utilities will be exposed when providing gas or electric service to customers, especially when customers use utility service first and pay for such service after the fact. Federal laws as well as operational standards require an accurate and fair inquiry into credit histories in a manner which protects private information. The Federal Reserve reviewed the factors associated with consumer reports in early-2003 and made several observations. First, the Federal Reserve noted in that report that:

> Overall, research and creditor experience has consistently indicated that credit reporting company information, despite any limitations that it may have, generally provides an effective measure of the relative credit risk posed by prospective borrowers.

An Overview of Consumer Data and Consumer Reporting, Federal Reserve Bulletin, Feb. 2003, 50-51 (citations omitted). The report also noted that:

> Available evidence indicates that these data and the credit-scoring models derived from them have substantially improved the overall quality of credit decisions and have reduced the costs of such decision-making. Almost certainly, consumers would receive less credit and the price of the credit they received would be higher, if not for the information provided by credit reporting companies. Moreover, the credit reporting system has become more comprehensive over the past decade with notable improvements, such as enhanced reporting of mortgage credit.

Id., at 70 (citations omitted, emphasis added).

For all the foregoing reasons, the IEA members recommend that credit scoring be retained as one reasonable method of determining the creditworthiness of customers.

4. The Winter Reconnect Rule. In their initial comments, IEA members pointed out that the Commission's proposed change related to the Winter Reconnect Rule is extremely problematic for Indiana utilities and all ratepayers. This proposed rule requires a utility to reconnect any customer from December 1 to March 15 upon such customer paying only 20% of what the customer owes and 20% of any deposit required. The remainder of the amount due would be put on a payment arrangement regardless of past payment habits. Again, this rule would fundamentally change customer behavior in a negative way, by over extending credit at a time when charges are at their highest levels causing customers to spiral further into debt, as the proposed rule applies to all customers, not merely customers who can demonstrate financial need.

The OUCC's suggested limitations do nothing to resolve the problems that IEA members pointed to in their initial comments. The OUCC recommends allowing reconnection of utility service from December 1 through March 15 after payment of 20% of any arrearage, 20% of any required deposit and the balances on a payment arrangement, but that such requirement apply only to customers with incomes equal to or less than 250% of the federal poverty level. IEA members are not privy to information necessary to determine which customers are equal to or less than 250% of the federal poverty level. Furthermore, requiring Indiana utilities to make such a determination would be unduly burdensome and inefficient. Utilities are not governmental agencies and should not be required to qualify customers for certain benefits based on income.

The IEA members analysis determined that bad debt writes offs could increase to an amount of $75 to $120 million annually due to implementation of the Payment Arrangement and Winter Reconnect Rule. The member companies believe capping the customer eligibility at 250% of the federal poverty level (which represents an estimated one million Indiana households according to the

2000 Census data) would not significantly impact the financial risk outlined in that analysis.

Again, IEA members submit that this section specifically, and the payment arrangement section generally, are just the types of rules that should be debated in a workshop setting, where the unintended consequences of the rules could be considered. The workshop environment could be utilized to balance the impact of the proposed rules with the Commission's desire for some sort of winter protection for low income customers.

Should the Commission ultimately implement the Winter Reconnect Rule detailed in its proposed rule or as proposed by the OUCC, IEA members agree with the OUCC that customers should be limited to use the rule only once per winter heating season. Additionally, IEA members would recommend that customers who have defaulted on payment arrangements are not eligible to utilize the winter rule. Additionally, IEA members would recommend that the State provide low income energy funding to assist this customer group. Currently, funding through federal and state dollars and programs serves an estimated 130,000 households in the State of Indiana. At 250% of poverty level, according to the 2000 Census data, this could require additional funding in the amount of $250 million dollars to serve the nearly one million households. Further, IEA members would support placing the responsibility of verifying eligibility of customers for winter reconnect on the OUCC and/or state government agencies of Indiana. These state agencies are in a better position than utilities to make such determinations, than utilities. Finally, IEA members recommend that the rule allow Indiana utilities to require a standard reconnection charge during this period.

5. <u>Estimated Bill.</u> Initial comments submitted to the IURC encourage the adoption of revised rules as proposed by the Commission, including the proposal that after three consecutive months of estimated readings, and unless otherwise requested by the customer, utilities shall secure an "accurate" reading of meters. The comments ignore the reality that utilities already avoid estimating bills for more than a month or two. Generally, if a utility is estimating bills over consecutive months, it is because access to the meter is being denied for

reasons beyond the utility's control, such as a vicious dog or mounds of snow. In this regard, the current rule, which only allows estimated bills for good cause, has not been shown to be deficient.

Neither the comments nor the proposed rules suggest how the accurate reading is to be reasonably obtained in the event that meter access is denied by the customer or otherwise unavailable. The solution proposed in the rules is discontinuance of service to the customer.

While discontinuance of service is an appropriate response to denial of access in certain cases, utilities generally employ this option in only very limited circumstances. Discontinuance of service for the sole purpose of obtaining an actual meter reading is counterproductive for both the customer and utility. In other limited circumstances, utilities will engage police escort to obtain access to utility equipment. Doing so for the sole purpose of obtaining a meter reading would be an inefficient use of the scarce resources of local authorities and, likewise, counterproductive for both the customer and utility.

In this regard, placement on the utilities of the unqualified and absolute obligation to obtain an "accurate" reading may have unintended consequences for customers, particularly customers of utilities not having the need, resources or plans to install automated meter reading equipment. Commission approval of a charge to compensate utilities for the installation cost of automated meter reading equipment on accounts where customers have been unresponsive to requests by utilities to provide access or ensure safe working conditions around utility metering equipment would be helpful in encouraging the installation of automated equipment to moot issues regarding estimated readings.

The Commission should not mandate meter reading practices but should continue to apply the current rule, which allows customers and utilities, respectively to determine the appropriate practice for a particular situation. For example, the customer residing in an older, urban dwelling where the utility meter is located in the basement of the dwelling, and who may work during hours when meter readings are taken, but who has not specifically requested estimated readings, may not appreciate discontinuance of service or police presence for the purpose of obtaining an actual reading. In this situation, the customer and the utility may both consider estimated readings to be reasonable approximations, with actual readings only infrequently obtained by the utility or provided by the customer to true-up estimated consumption to actual. Utilities are presently limited to the estimating of readings only for good cause and this limitation is sufficient regulation with respect to meter reading practices.

The proposed rule requiring that all initial or final bills be based upon actual meter readings is a further example of excessive and expensive regulation. Significant additional costs would be incurred by utilities that could amount to millions of dollars across the state. This increased cost is unnecessary because the assumption that it will lead to significant incremental precision is unwarranted. Utilities possess sophisticated and complex billing systems, which are able to accurately estimate daily consumption and mid-month meter readings for individual customer accounts, particularly residential accounts whose load is relatively consistent and predictable. In most cases, if customers express concerns regarding estimated initial or final readings, utilities work with customers, including reliance on customer-provided readings, to resolve the concerns.

The obtaining of an actual reading for every initial or final bill would require utilities to hire increased complements of personnel trained to obtain meter readings. Further, the workload would fluctuate significantly on a seasonal basis, and for other reasons, resulting in overstaffing or understaffing at varying times depending on work requirements. Inefficiencies in staffing alone would result in tremendously increased costs of service.

Another factor, and perhaps an unintended consequence, of the adoption of the rule would be that utilities may decide that, if the cost is inevitably incurred to dispatch personnel to obtain actual readings, the service should be disconnected while the utility representative is on site. Utilities employing estimated readings for final bills also generally allow the utility service to the premises to remain in the "on" status between tenants. The service is thereby available for use at the time that a new tenant takes occupancy and responsibility for the utility service. This is a known and accepted practice, not just in Indiana, but also throughout the industry. The disconnection of service between tenants, although employed when necessary, is not appropriate in all situations and will not promote positive customer satisfaction.

For these reasons, the requirement that all initial or final bills be based upon actual meter readings should be struck from the proposed rules.

Other initial comments submitted to the Commission suggest that recovery of more than six months of lost revenue for malfunctioning or failed meters should be disallowed. Customers affected by a malfunctioning meter have consumed the energy, but have not paid for the service. The revenues lost by utilities from specific customers are ultimately absorbed by all customers through general rate increases. The revised rules represent further restriction on the utilities' ability to recover revenues lost as the result of meter malfunction. The OUCC's suggestion precludes utilities from collecting any amounts owed when a meter malfunction or error has not been discovered within six months, but requires a utility to credit the customer if the error resulted in an over charge. The IEA members contend that this treatment is patently unfair. Finally, this proposed section directly contradicts current Commission rules concerning billing adjustments, which are not proposed to be changed (see 170 I.A.C. 4-1-14). The proposed rule should be struck from consideration.

6. Daisy-Chaining. In its initial comments, several IEA member utilities proposed the addition of a language to the rules address fraud generally, and "daisy-chaining," specifically. To restate, daisy-chaining occurs when a customer signs up for service, incurs an outstanding balance, and fails to pay. The delinquent account is disconnected for nonpayment of service, or is due to be disconnected for nonpayment of service. At that point, another resident in the same household requests that service be put in his or her name, and seeks to avoid paying any of the first customer's past due balance. The first customer continues to receive services under the new account created by the other resident. Consequently, the first customer also has no incentive to pay, and often does not pay, the outstanding balance.

This recurrence of fraudulent activity affects IEA members collectively. The costs related to allowing such a practice increase the uncollectible debt for all Indiana utilities, which is absorbed by other Indiana ratepayers. This situation can be repeated multiple times in spousal relationships, with new roommates, in relocations, or in new residences. In each instance, delinquent customers continue to benefit from Indiana utilities' provision of utility service, while failing to pay past due arrearages. As the IEA member companies indicated in their initial comments, several other states prohibit this kind of fraud. Consequently, IEA members advocate making this type of fraud grounds for disconnection of service or refusal to institute service until the past due amount is paid.

As the Commission's proposed rules are not entirely clear on this issue, IEA members propose that the Commission's final rule provide unambiguous language granting Indiana utilities the right to deal with this form of fraud. IEA members recommend that the Commission's final rule contain the necessary language to allow utilities to disconnect or deny service, until the past due amount is paid, on the basis of the delinquent account of another person when daisy-chaining has occurred.

Several IEA member companies proposed differing language in their redlined initial comments concerning this issue. This is yet another example of why a workshop setting and more time is needed to adequately address the issues raised in this proposed rulemaking. Workshops would allow collaboration by all interested parties, resulting in optimal language that will clearly and unambiguously deal with the issue of fraud generally, and daisy chaining specifically.

7. Exemption of Small Gas Companies. The IEA would like to take this opportunity to reiterate its support for an exemption for LDCs with a customer base less than 50,000 from proposed deposit and customer service rules more stringent than are already in place. The logic behind this request is reasonable and justified. Those sentiments are best expressed by the initial comments submitted by Midwest Natural Gas on this subject, which provided:

> The additions and amendments proposed would require significant changes in personnel, customer information systems, tracking of information, and the way small LDC's conduct collection of past-due balances. The administrative burden, as well as the increase in bad debts is no small matter. Small LDC's are unlikely to be able to

meet the requirements without significant investment in system upgrades and personnel additions.

Small LDC's are situated uniquely to serve the needs of their customers. Instead of using a call center with 100s of employees located out of state from the customer, Midwest has the same few office staff handling every customer call. They are more familiar with the areas served and, in many cases know, or know of, the customer. Midwest believes that the smaller size of utility lends itself to a level of customization that currently serves customers well.

Accordingly, we encourage the Commission to consider an exemption from these rules for small natural gas utilities serving fewer than 50,000 customers.

CONCLUSION

The IEA reiterates its position that the Commission should withdraw its proposed changes and institute a series of workshops to deal with these complex issues. The proposed rules present many difficulties for the affected utilities and would result in millions of dollars increased uncollectible costs that eventually must be paid by all consumers. The best outcome for all could be reached through a collaborative workshop setting where all ideas and consequences can be adequately explored. The issues are just too complex and interrelated to fully explore in the formal rulemaking process. In the alternative, the IEA respectfully requests the Commission consider and accept the comments and redlined changes submitted by the IEA and its members in their initial and reply filings, and change the proposed rules accordingly.

Respectfully Submitted,

Edwin Simcox

President

INDIANA ENERGY ASSOCIATION

Dated: December 10, 2004